BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation

Edward R. Wholl
Jacqueline E. Holmes Nethersole
Katherine S. Abrams

120 Bloomingdale Road
White Plains, NY 10605
914-644-5735

Its Attorneys

Dated: November 8, 1993

TABLE OF CONTENTS
COMMENTS OF
NYNEX CORPORATION

SUMMARY

In implementing the communications provisions of the Budget Reconciliation Act of 1993, the Commission has the opportunity to put in place a regulatory regime that will encourage the development of a fully competitive market. This objective can best be achieved if the Commission adopts regulatory policies that permit each potential competitor to enter the market on equal regulatory terms and conditions.

To promote competitive parity and equitable regulatory treatment, NYNEX proposes that the Commission adopt definitional criteria for statutory terms that focus on the nature of the service provided, as viewed from the customer's perspective. This approach will reflect the realities of the marketplace and will result in regulatory parity for those service providers offering comparable services.

NYNEX supports the Commission's proposal to forbear from extensive Title II regulation of mobile services. Competition in the provision of commercial mobile services is rigorous and provides sufficient protection from any carrier-initiated abusive practices. The regulation of these services will only serve to inhibit the development of competition in these markets.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation (hereinafter "NYNEX") respectfully submits the following comments in response to the above-captioned Notice of Proposed Rulemaking (hereinafter "Notice") released by the Commission on October 8, 1993.

I. INTRODUCTION AND SUMMARY OF POSITION

In its Notice, the Commission seeks comment on a number of definitional and policy issues raised by the Omnibus Budget Reconciliation Act of 1993, signed into law on August 10, 1993, (hereinafter "the Budget Act" or "the Act").[1] The Budget Act amends Sections 3(n) and 332 of the Communications Act of 1934 to create a comprehensive regulatory framework for all mobile radio services and directs the Commission to conduct a rulemaking proceeding to formulate regulations applicable to

---

1 Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

all mobile services, including existing common carrier mobile services and Personal Communications Services ("PCS"). The Commission's Notice proposes implementational rules, as directed by the Budget Act, and seeks comment on the tentative conclusions reached by the Commission regarding the regulatory treatment of mobile radio services.

The Notice raises issues which, depending on their resolution, will have a profound impact on the extent to which competition develops in the provision of wireless services generally, and PCS services specifically. Over the past twenty five years, the Commission has attempted to fashion its regulatory policies so as to promote the development of fully competitive markets. This goal, as the Commission has found, is best achieved by adopting a regulatory regime that permits each competitor to fully enter the competitive fray on equal regulatory terms and conditions. NYNEX encourages the Commission to adopt a regulatory framework in this proceeding that ensures a level playing field for wireless services.

Not only would such an approach be consistent with sound and well-established regulatory policies, it would be fully consistent with the intent of Congress. It is clear that Congress, by bringing all existing mobile service providers within the ambit of Section 332 of the Communications Act, intended that mobile service providers furnishing comparable communications services be subjected to comparable regulatory treatment.

In our view, competitive parity and equitable regulatory treatment is best achieved by the adoption of rules

which focus on the nature of the service provided, as viewed from the customer's perspective. We are concerned, however, that the Commission's tentative conclusion in this regard relies too heavily, and improperly, upon the identity of the service provider or on the technology used to provide the service. As a result, the Commission's tentative proposal would lead to the adoption of regulations which would inhibit competition by imposing different regulatory treatment on service providers based on artificial regulatory distinctions. In Sections II and III, we propose policy and definitional criteria that reflect the realities of the marketplace and which will result in regulatory parity for those service providers offering comparable services. We believe that these criteria will lead to a regulatory regime that will encourage rigorous competition in the satisfaction of customer requirements.

The development of a competitive commercial mobile services industry will be enhanced by the Commission's forbearance from Title II regulation of mobile services. As the Commission has previously recognized, regulation is appropriate only where competition in the market is inadequate to protect the consumer from anticompetitive practices. Section IV of these comments reflects our view that the level of competition in the commercial mobile services marketplace is sufficient to permit the substantial forbearance of regulation, including the elimination of tariff filing requirements. Indeed, recent experience in the cellular industry demonstrates that forbearance from regulation results in more rigorous price and service competition.

II. THE DEFINITIONAL CRITERIA ADOPTED BY THE COMMISSION SHOULD EFFECTUATE THE INTENT OF THE STATUTE, ENSURE COMPETITIVE PARITY AND PROMOTE COMPETITION

A. The Definition of Mobile Services Should Include All Existing Mobile Services

The Commission proposes to include all existing mobile services and personal communications services licensed under proposed Part 99 as "mobile services" pursuant to section 3(n) of the Act.[2] NYNEX agrees with the Commission that this definition is consistent with Congress' intent to bring all existing mobile services within the ambit of Section 332 of the Act. The Commission's proposal will also ensure that all carriers providing similar services are accorded the same regulatory treatment and that competition between such carriers is not hindered by artificial regulatory limitations.

B. The Definition Of Commercial Mobile Service Should Be Consistent With Market Realities And Should Be Applied On A Service-By-Service Basis

To be classified as a commercial service, the service must (1) be "provided for profit" and (2) make "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." The Commission requests comment on how the various elements of "commercial mobile service" should be defined or interpreted.[3] In defining these terms, the Commission should adopt a service-by-service analysis that

---

2 Notice at ¶9.

3 Notice at ¶10.

should be consistent with market realities and should reflect the definitional criteria we describe below.

1. The "For Profit" Criteria

The Commission seeks comment on how the term "for profit" should be defined.[4] In defining "for profit" the Commission should employ its ordinary meaning -- those licensees who provide services to customers with the intent of receiving a return on their capital outlay or expenditures. In other words, the test should hinge on whether the primary motivation in offering the service is profit. This criterion is identical to that applied by the Internal Revenue Service in determining whether to apply tax exempt status to entities requesting such treatment.[5] Using this criteria, NYNEX agrees with the Commission that public safety mobile services and businesses that operate mobile radio systems solely for their own internal use would not be considered to be providing mobile radio services to customers for profit.[6]

NYNEX also agrees with the Commission's tentative conclusion that the "for-profit" test should be based on whether the service as a whole is offered on a commercial basis.[7] That is, a service provider would be classified as offering a for-profit, commercial service even if the

---

4 Notice at ¶11.

5 See e.g., I.R.C. 501(c)(3) which defines an entity as tax exempt based on its profit-making motives or lack thereof.

6 Notice at ¶11.

7 Notice at ¶12.

"interconnected" portion of its service was being offered on a non-profit basis. This approach recognizes marketplace realities. Customers focus on the charges they pay for the functional service they receive; they do not distinguish between the mobile radio and interconnected portions of their service. Commercial service providers should not be able to manipulate their regulatory treatment by simply placing their margin on one component of the service as against another.

It is entirely possible that service providers may offer certain services on a for-profit basis and offer other services on a non-profit basis. We caution the Commission to avoid adopting a rule that would have the identity or character of the service provider trigger the application of the "commercial service" definition.[8] Instead, NYNEX urges the Commission to focus its definitional scrutiny on the service itself. For example, in the case of the government and non-profit public safety services, it is the non-profit public safety or governmental use of the service rather than the user of the spectrum that characterizes the service as "private". However, to the extent that public safety licensees or licensees who operate systems for internal purposes make excess capacity available on a for-profit basis, those licensees should be deemed to be providing commercial mobile services to

---

8 In paragraph 11, the Commission states that the "for profit" element of the definition of commercial mobile service is intended to distinguish between "mobile radio licensees who offer mobile radio services on a for-profit basis to customers and those licensees who do not." Notice at ¶11 (emphasis added).

the extent of their for-profit activities. This approach will ensure regulatory parity and fair competition between providers of comparable services.

2. The "Interconnected Service" Criteria

The Commission seeks comment on how the terms "interconnected service" and "interconnected with the public switched network" should be defined. The legislative history associated with the Act demonstrates that Congress intended that these terms be interpreted in a manner that focuses on services as a whole as viewed from the customer's perspective.

NYNEX believes that the definition of the term "interconnected service" should turn on whether the service provides customers with control over access to other networks.[9] That is, the term should be defined as the ability of the customer routinely to direct calls "off-net," or in other words, to a termination point or points outside the subscriber's mobile radio service network. Under the criteria proposed by NYNEX, services that provide customers limited access (i.e., access to points within their own mobile radio service networks) will not be deemed to be "interconnected services." If, on the other hand, the service offers customers the ability to control "off net" access, then that service should be deemed to be "interconnected."

---

9 This definition ensures flexibility by permitting carriers to offer interconnected services in some instances and, in other instances, those same providers may offer private, or "non-interconnected" services. At the same time, this balanced approach will ensure that services are classified on a service-by-service basis and, thus, that carriers offering customers the same service will be governed by the same set of rules.

If the definition of "interconnected service" depends on the subscriber's ability to control access to the public served by other networks, as we believe it should, the specific configuration used to obtain such access should not be of definitional significance. Thus, interconnected service would include services that are interconnected directly to the "public switched network" or interconnected indirectly through PBXs and other devices.[10]

The Commission should exercise care to avoid the adoption of an unduly narrow definition of the "public switched network." The legislative history of the Act does not suggest that Congress intended the term "public switched network" to include only the traditional LEC-provided public switched telephone network ("PSTN"). Indeed, to adopt such a limiting definition would improperly focus on service providers and the technology used to provide the service and would perpetuate the unlevel playing field that characterizes the Commission's present regulation of common and so-called private carriers. The Commission should employ a definition of the "public switched network" that reflects today's competitive environment for wireless services. As a result of revolutionary technological changes and increased competition, the "network" is a quickly and constantly evolving concept. Today customers

---

10 NYNEX believes that "store and forward" types of services should generally be considered "private" because they are not "interconnected with the public switched network". In the case of "store and forward" services, messages sent "on-net" are forwarded "off-net" by the network equipment at some future time. The time and "off-net" process is controlled by the licensee, not the end user.

have access to a large number of technologically diverse systems including numerous local and regional networks, for example, teleports, interexchange networks, cable television systems, metropolitan area networks, cellular radio systems, paging networks and will soon have access to nation-wide PCS systems that could, for millions of people, make access to the "old PSTN" unnecessary.

Viewed in light of the existing and emerging competitive alternatives for local exchange service, the Commission should define "interconnected service" and "interconnection to a public switched network" to include customer-controlled access to any other "off net" party whether by interconnection to a commercial mobile system, the LEC PSTN or a landline network operated by an alternative provider.

3. The "Service Availability To The Public" Criteria

The Commission seeks comment on the appropriate standard to be used in defining the term, used in the statute, "to public or to such classes of eligible users as to be effectively available to a substantial portion of the public." NYNEX agrees with the Commission[11] that the legislative history of the statute makes it clear that Congress intended to include within this definitional criteria services that were not offered to the general public without restriction. Thus, services presently offered by private carriers (i.e., individually negotiated services that target specialized

---

11 Notice at ¶23.

user groups) should be considered commercial mobile services under the revised standard.

The statute also makes it clear that not all services offered by existing common carriers would be considered commercial mobile services under the new rule. Common carriers can, and do, provide services so highly specialized as to be of interest to a single customer only. These services are not available to the public or a "substantial portion of the public" and should not be regulated as commercial mobile services.

The general availability of the service should trigger the classification of the service. That is, the test should rely on whether a service is offered indiscriminately as a general public service offering. The practical availability of the service should be a good indicator of whether the licensee intends to make its service available to the public without restriction. Under the approach we suggest, a service that is offered throughout the BTA or MTA without restriction on eligibility would be considered "effectively available to a substantial portion of the public" and, assuming other definitional criteria were met, would be considered a "commercial mobile service." The use of this criteria would permit licensees the flexibility to use their spectrum to provide a wide range of services some of which would be classified as "private."[12]

---

12 For example, a customized customer offering made available only to a single customer would be "private" even though

(Footnote Continued On Next Page)

The Commission asks for comment on whether system capacity should be used as a factor to determine when a service is "effectively available to the public." We believe not. Use of system capacity as a determining factor would require the Commission to focus on the technology used to provide the service, rather than the service itself.

C. The Definition Of Private Mobile Service Should Result In Equal Regulatory Treatment For Carriers Providing Like Services

The Commission requests comment on how mobile services should be classified under the statutory definition of "private mobile service."[13] In the Commission's view, the statutory language and legislative history would permit several interpretations of private mobile service.[14]

---

12 (Footnote Continued From Previous Page)

the service was available to the customer throughout the entire nation. At the same time, an interconnected service made available without restriction to all business customers located within a limited geographic area would be a public, commercial offering.

13 Section 332(d)(3) defines "private mobile service" as any mobile service that is not a commercial mobile service or the "functional equivalent of a commercial mobile service."

14 Under one interpretation, a mobile service would be classified as private if (1) it fails to meet the statutory definition of a commercial mobile service, or (2) it is not the functional equivalent of a commercial mobile service. This interpretation of the statutory definition would permit the classification of services as "private" even if the service fell within the literal definition of commercial mobile service if it was determined that the service was not "functionally equivalent" to commercial mobile service. Notice at ¶29. A second interpretation would provide that private mobile service does not include any mobile service that (1) fits

(Footnote Continued On Next Page)

NYNEX supports adoption of the two-part test that would exclude from the private mobile service definition any service that satisfies the criteria for commercial mobile service as well as any service that is the "functional equivalent" of a commercial mobile service. As the Commission recognizes, this interpretation is consistent with the language of the statute and its legislative history. This interpretation also has the advantage of promoting the desirable regulatory objective of subjecting functionally similar services to the same regulatory requirements.

The Commission also requests comment on the specific standards that should be used to determine whether a given mobile service is the functional equivalent of a commercial mobile service.[15] NYNEX urges the Commission to refrain from adopting the technological test described in the Conference Report. The use by the licensee of a particular technology (e.g., channel or frequency re-use) is, by itself, a poor indicator of whether a service should be considered "commercial" or "private." It is clear that different technologies are capable of providing, from the customer's perspective, similar services. Carriers providing like

---

14 (Footnote Continued From Previous Page)

the definition of a commercial mobile service, or (2) is the functional equivalent of a commercial mobile service. Under this approach, a mobile service that does not squarely meet the statutory test for a commercial mobile service could still be classified as such if it is determined that it is a "functional equivalent." Notice at ¶31.

15 Notice at ¶32.

communications services (e.g., in-building wireless service) should be regulated in the same manner, regardless of their choice of technology. Such regulatory parity will promote competition by encouraging a multitude of service providers to offer a broader range of services within their areas.

NYNEX supports the use by the Commission of the functional equivalency test employed by the Commission to address issues of "like communications services" under Section 202 of the Act. This test properly focuses on both the nature of the services provided and the customer's perception of functional equivalency of those services. The Commission and the Courts have developed and refined this test in a number of cases and it will provide clear standards to be used in distinguishing between commercial and private services.[16]

Because it could significantly impact the manner in which their business is conducted, licensees should be afforded guidance by the Commission regarding the regulatory classification of their services. Thus, the Commission should adopt general rules regarding the functional equivalency test, and these general rules must emphasize customer perceptions.

The Commission should avoid adopting a process that would require it to address this issue on a case-by-case or service-by-service basis inasmuch as that approach would be unnecessarily complex and burdensome. Furthermore, such an

---

16 See e.g., Ad Hoc Telecommunications Users Committee v. FCC, 680 F.2d 790 at 796 (where the Court emphasized that customer perception is the key factor to be considered in determining functional equivalency).

approach will likely result in frequent litigation and could result in the delayed introduction of services to the public.

III. THE PROPER REGULATION OF EXISTING SERVICES SHOULD REFLECT THE DEFINITIONAL CRITERIA ADOPTED BY THE COMMISSION

The Budget Act requires the Commission to reexamine the regulatory status of all existing services under the statutory definitions embodied in the Act. Therefore, the Commission seeks comment on which existing mobile services will become commercial mobile services and which will become private mobile services under Section 332(d).[17]

A. Existing Private Services

The Commission proposes to classify all existing private non-commercial services (i.e., those used only for a licensee's internal use) as "private" under Section 332(d)(3). NYNEX agrees that the Commission's proposal properly implements the statutory criteria.

1. SMR Service

In NYNEX's view, the provision of certain SMR services could be reclassified as commercial mobile service under the statute. For example, in applying the criteria discussed in Section II, above, the provision of enhanced SMR service would appear to require reclassification as a commercial mobile service. The provision of the service meets the "for-profit" test, is interconnected to the public switched network with customers controlling access to the PSTN, and the service is

---

17 Notice at ¶34.

available to a substantial portion of the public. Moreover, because many customers will perceive the provision of enhanced SMR and cellular services to offer functionally equivalent services, the services should be subject to the same regulatory treatment.

The regulatory treatment of other SMR services should depend on the definitional criteria adopted by the Commission. Thus, consistent with the comments offered above, the provision of wide-area SMR service, if provided for-profit and interconnected to the public switched network, should be considered available to a "substantial portion of the public" and should be classified as a commercial mobile service.[18]

2. Private Carrier Paging Service

NYNEX agrees with the Commission that most private carrier paging systems should be classified as "private" under the new statute.[19] While these services are generally provided for profit and without significant restrictions on eligibility, service area, or capacity, the store and forward nature of these systems do not fit within the definition of "interconnected service".

---

18 Wide-area SMRs should not be treated as "private" solely because they do not employ frequency reuse. Rapid changes in technology may permit carriers to service a "substantial portion of the public" even without engaging in frequency or channel re-use. The Commission should classify existing SMRs based on the size of the market area served, the practical availability of the service and whether the services are functionally equivalent to those offered by commercial mobile service providers.

19 Notice at ¶39.

B. Existing Common Carrier Services

NYNEX agrees with the Commission's tentative conclusion that existing common carrier mobile services that provide interconnected service to the public will generally be classified as commercial mobile services.[20] As the Commission recognizes, however, existing mobile common carriers are increasingly offering new services that, under the new statutory definitions, could be classified as private. To recognize these distinctions, the regulatory regime adopted by the Commission must be flexible enough to permit the same licensee the ability to offer certain of its services as "commercial" and others as "private".

1. Dispatch Service

The Commission should amend its rules to permit common carriers who are classified as commercial mobile service providers to provide dispatch service in the future. Expanded eligibility for the provision of dispatch service would serve the public interest by stimulating increased competition and by providing customers with an expanded choice of service providers.[21]

---

20 Notice at ¶41.

21 The Commission should explore eliminating eligibility restrictions in other services as well. There is little justification, for example, in continuing to restrict common carrier participation in the provision of SMR services.

2. Satellite Services

The Commission seeks comment on the procedures that should apply to satellite services.[22] NYNEX supports the Commission's tentative decision that existing procedures should continue to apply to satellite services offered directly to end users. Thus, the Commission should continue to authorize domestic satellite licensees to provide services on an non-common carrier basis if the public interest is served. A satellite service would be determined to be commercial mobile service if its services offered directly to the general public on an interconnected basis.

3. Personal Communications Service

PCS carriers are likely to want to provide a wide variety of services to their customers. In our view, the public will be served by adopting a regulatory regime that will permit carriers the opportunity to meet customer requirements in the most efficient and economical manner. It is critical, however, that all carriers providing functionally equivalent services be regulated in the same manner.

PCS licensees should be given the flexibility to use their spectrum to offer both commercial and private PCS service. We support granting all mobile service providers, including PCS carriers, the flexibility to offer services both on a primary and secondary basis or on a channel-block

---

22 Notice at ¶43.

basis.[23] We recognize that providing carriers with this degree of flexibility may give rise to procedural concerns, but any administrative concerns that the Commission may have are outweighed by the benefits to be gained by creating a flexible environment for PCS.

In any event, in order to simplify the administrative burdens created by such a flexible approach, the Commission may want to consider adopting a rule providing that PCS services will generally be considered to be commercial services. Licensees wishing to use their PCS spectrum to provide private services would be permitted to do so upon filing an application with the Commission outlining the type of service being proposed. This procedure will afford the Commission an opportunity to maintain regulatory parity and ensure compliance with the requirements of the Act.

IV. THE COMMISSION SHOULD FORBEAR FROM IMPOSING TITLE II REQUIREMENTS ON MOBILE SERVICES, EXCEPT FOR SECTIONS 201, 202, AND 208

The Commission requests comment on whether it should forbear from regulation of commercial mobile service providers.[24] NYNEX agrees with the Commission's tentative

---

23 There appears to be several practical impediments to offering commercial mobile services on a secondary basis. It is likely that carriers choosing this option will offer commercial service on a primary basis and private service on a secondary, or auxiliary, basis.

24 The Act permits the Commission to forbear from imposing Title II regulation if it determines that: (i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or

(Footnote Continued On Next Page)

conclusion that the level of competition in the commercial mobile services marketplace is sufficient to permit forbearance.[25] The Commission's conclusion is consistent with the findings of forty-two state legislatures and commissions who have either deregulated or streamlined their regulation of wireless services, including paging and cellular services.[26]

It is also clear that forbearance from regulation will produce important public benefits. For example, the NYPSC, in deciding to streamline its regulation of cellular carriers, observed that:

> (d)one wisely, (the transition from regulation to competition) offers potentially lower prices, higher service quality, broader consumer choice, more efficient industries, higher productivity, and a stimulus to economic growth, especially in the information-intensive service industries that provide the economic backbone of the New York economy.[27]

---

24 (Footnote Continued From Previous Page)

regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) specifying such provision is consistent with the public interest." Notice at ¶57.

25 Id. at ¶62.

26 Cellular Telecommunications Industry Association, Semi-Annual Report on State Regulation, July 1993 Edition.

27 Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Opinion and Order Concerning Regulatory Response to Competition, Case 29469, Opinion 89-12, Issued May 16, 1989, at ¶3.

In contrast, the regulation of these services, under traditional regulation, would likely produce undesirable results. A recent Cellular Telecommunications Industry Association (CTIA) study showed that rate regulation results in higher rates, reduced pricing flexibility and, ultimately, has an investment dampening effect.[28]

In order to respond effectively to competitive changes in the marketplace, carriers must be free to change their prices as quickly as possible, and without notice to their competitors. Rate regulation impedes the operation of a free marketplace because competitors would receive notice through regulatory filings of price changes, new services, or other offerings before such offerings are available to the communications public. In addition, carriers would have to expend resources in filing fees, processing fees and litigation expenses before the Commission which, in a competitive marketplace, could otherwise be used to enhance competition.

For these reasons, the Commission should forbear from applying sections 203, 204, 205, 210, 211 212, 213, 214, 215, 218, 219, 220 and 221 of the Act to commercial mobile service providers.

The statute does not permit the Commission to forbear from applying Sections 201, 202 and 208 of the

---

28 CTIA, Eight Ways That State Rate/Entry Regulation Hurts Consumers. Semi-Annual Report on State Regulation, July 1993 Edition.

Communications Act. Consistent with the intent of Congress to provide consumers with some measure of protection against possible carrier abuses, NYNEX does not oppose the applications of Sections 206, 207, 216, 217, 223, 225, 226, 227 and 228 to providers of commercial mobile service. The application of these sections will provide the public with adequate safeguards without jeopardizing the development of a competitive market.

The Commission also requests comment on whether it should impose "safeguard requirements" on dominant carriers with commercial mobile service affiliates.[29] No such additional requirements are necessary or appropriate. In this regard, the Commission has recently concluded:

> allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks. We believe that these economies will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers. In addition, allowing LECs to provide PCS service should encourage them to develop their wireline architectures to better accommodate all PCS services. We also conclude, based on the record, that the cellular-PCS policies indicated above are adequate to ensure that LECs do not behave in an anticompetitive manner. Thus, no new separate subsidiary requirements are necessary for LECs (including BOCs) that provide PCS. Indeed, by seriously limiting the ability of LECs to take advantage of their potential economies of scope, such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS. In addition, we do not believe that commenters have justified imposing additional

---

29 Notice at ¶64.

cost-accounting rules on LECs that provide PCS service.[30]

The existing structural separation requirements for BOCs and their cellular operations[31] should also be eliminated. The concerns which led to the adoption of these safeguards, over a decade ago, are no longer valid in today's competitive markets. The BOCs, as any other carrier, should have the flexibility to structure their business to meet the needs of their customers for integrated solutions to their communications requirements in the most efficient manner.[32]

V. CONCLUSION

The Commission is faced with an awesome responsibility. The rapid technological changes taking place in the industry hold the promise of wireless technologies dramatically changing the telecommunications infrastructure of this country. The Commission must adopt a regulatory regime that will encourage the development of new technologies,

---

30 Amendment of the Commission's Rules to Establish New Personal Communications Service, GEN Docket No. 90-314, Second Report and Order, FCC No. 93-451, released October 22, 1993, at ¶126 (footnotes omitted).

31 See 47 C.F.R. § 22.901(b).

32 The Commission should immediately undertake a rulemaking proceeding that would result in the elimination of the structural separation requirement.